

FIRST REGULAR SESSION

SENATE BILL NO. 261

94TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR KOSTER.

Read 1st time January 11, 2007, and ordered printed.

TERRY L. SPIELER, Secretary.

1065S.011

AN ACT

To repeal sections 217.362 and 559.115, RSMo, and to enact in lieu thereof two new sections relating to prison commitments.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 217.362 and 559.115, RSMo, are repealed and two new
2 sections enacted in lieu thereof, to be known as sections 217.362 and 559.115, to
3 read as follows:

217.362. 1. The department of corrections shall design and implement an
2 intensive long-term program for the treatment of chronic nonviolent offenders
3 with serious substance abuse addictions who have not pleaded guilty to or been
4 convicted of a dangerous felony as defined in section 556.061, RSMo.

5 2. Prior to sentencing, any judge considering an offender for this program
6 shall notify the department. The potential candidate for the program shall be
7 screened by the department to determine eligibility. The department shall, by
8 regulation, establish eligibility criteria and inform the court of such criteria. The
9 department shall notify the court as to the offender's eligibility and the
10 availability of space in the program. Notwithstanding any other provision of law
11 to the contrary, except as provided for in section 558.019, RSMo, if an offender
12 is eligible and there is adequate space, the court may sentence a person to the
13 program which shall consist of institutional drug or alcohol treatment for a period
14 of at least twelve and no more than twenty-four months, as well as a term of
15 incarceration. The department shall determine the nature, intensity, duration,
16 and completion criteria of the education, treatment, and aftercare portions of any
17 program services provided. Execution of the offender's term of incarceration shall
18 be suspended pending completion of said program. Allocation of space in the

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

19 program may be distributed by the department in proportion to drug arrest
20 patterns in the state. If the court is advised that an offender is not eligible or
21 that there is no space available, the court shall consider other authorized
22 dispositions.

23 3. Upon successful completion of the program, the board of probation and
24 parole shall advise the sentencing court of an offender's probationary release date
25 thirty days prior to release. If the court determines that probation is not
26 appropriate the court may order the execution of the offender's sentence.

27 4. If it is determined by the department that the offender has not
28 successfully completed the program, or that the offender is not cooperatively
29 participating in the program, the offender shall be removed from the program and
30 the court shall be advised. Failure of an offender to complete the program shall
31 cause the offender to serve the sentence prescribed by the court and void the right
32 to be considered for probation on this sentence.

33 [5. An offender's first incarceration in a department of corrections
34 program pursuant to this section prior to release on probation shall not be
35 considered a previous prison commitment for the purpose of determining a
36 minimum prison term pursuant to the provisions of section 558.019, RSMo.]

559.115. 1. Neither probation nor parole shall be granted by the circuit
2 court between the time the transcript on appeal from the offender's conviction has
3 been filed in appellate court and the disposition of the appeal by such court.

4 2. Unless otherwise prohibited by subsection 5 of this section, a circuit
5 court only upon its own motion and not that of the state or the offender shall
6 have the power to grant probation to an offender anytime up to one hundred
7 twenty days after such offender has been delivered to the department of
8 corrections but not thereafter. The court may request information and a
9 recommendation from the department concerning the offender and such offender's
10 behavior during the period of incarceration. Except as provided in this section,
11 the court may place the offender on probation in a program created pursuant to
12 section 217.777, RSMo, or may place the offender on probation with any other
13 conditions authorized by law.

14 3. The court may recommend placement of an offender in a department
15 of corrections one hundred twenty-day program. Upon the recommendation of the
16 court, the department of corrections shall determine the offender's eligibility for
17 the program, the nature, intensity, and duration of any offender's participation
18 in a program and the availability of space for an offender in any program. When

19 the court recommends and receives placement of an offender in a department of
20 corrections one hundred twenty-day program, the offender shall be released on
21 probation if the department of corrections determines that the offender has
22 successfully completed the program except as follows. Upon successful completion
23 of a treatment program, the board of probation and parole shall advise the
24 sentencing court of an offender's probationary release date thirty days prior to
25 release. The court shall release the offender unless such release constitutes an
26 abuse of discretion. If the court determined that there is an abuse of discretion,
27 the court may order the execution of the offender's sentence only after conducting
28 a hearing on the matter within ninety to one hundred twenty days of the
29 offender's sentence. If the court does not respond when an offender successfully
30 completes the program, the offender shall be released on probation. Upon
31 successful completion of a shock incarceration program, the board of probation
32 and parole shall advise the sentencing court of an offender's probationary release
33 date thirty days prior to release. The court shall follow the recommendation of
34 the department unless the court determines that probation is not appropriate. If
35 the court determines that probation is not appropriate, the court may order the
36 execution of the offender's sentence only after conducting a hearing on the matter
37 within ninety to one hundred twenty days of the offender's sentence. If the
38 department determines that an offender is not successful in a program, then after
39 one hundred days of incarceration the circuit court shall receive from the
40 department of corrections a report on the offender's participation in the program
41 and department recommendations for terms and conditions of an offender's
42 probation. The court shall then release the offender on probation or order the
43 offender to remain in the department to serve the sentence imposed.

44 4. If the department of corrections one hundred twenty-day program is
45 full, the court may place the offender in a private program approved by the
46 department of corrections or the court, the expenses of such program to be paid
47 by the offender, or in an available program offered by another organization. If
48 the offender is convicted of a class C or class D nonviolent felony, the court may
49 order probation while awaiting appointment to treatment.

50 5. Except when the offender has been found to be a predatory sexual
51 offender pursuant to section 558.018, RSMo, the court shall request that the
52 offender be placed in the sexual offender assessment unit of the department of
53 corrections if the defendant has pleaded guilty to or has been found guilty of
54 sexual abuse when classified as a class B felony.

55 6. Unless the offender is being granted probation pursuant to successful
56 completion of a one hundred twenty-day program the circuit court shall notify the
57 state in writing when the court intends to grant probation to the offender
58 pursuant to the provisions of this section. The state may, in writing, request a
59 hearing within ten days of receipt of the court's notification that the court intends
60 to grant probation. Upon the state's request for a hearing, the court shall grant
61 a hearing as soon as reasonably possible. If the state does not respond to the
62 court's notice in writing within ten days, the court may proceed upon its own
63 motion to grant probation.

64 7. [An offender's first incarceration for one hundred twenty days for
65 participation in a department of corrections program prior to release on probation
66 shall not be considered a previous prison commitment for the purpose of
67 determining a minimum prison term under the provisions of section 558.019,
68 RSMo.

69 8.] Notwithstanding any other provision of law, probation may not be
70 granted pursuant to this section to offenders who have been convicted of murder
71 in the second degree pursuant to section 565.021, RSMo; forcible rape pursuant
72 to section 566.030, RSMo; forcible sodomy pursuant to section 566.060, RSMo;
73 statutory rape in the first degree pursuant to section 566.032, RSMo; statutory
74 sodomy in the first degree pursuant to section 566.062, RSMo; child molestation
75 in the first degree pursuant to section 566.067, RSMo, when classified as a class
76 A felony; abuse of a child pursuant to section 568.060, RSMo, when classified as
77 a class A felony; an offender who has been found to be a predatory sexual offender
78 pursuant to section 558.018, RSMo; or any offense in which there exists a
79 statutory prohibition against either probation or parole.

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